

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

XPOINT TECHNOLOGIES, INC.,

Plaintiff,

v.

Civil Action No. 09-628-SLR

MICROSOFT CORPORATION, et al.

Defendants.

PLAINTIFF'S UNOPPOSED MOTION TO SUBSTITUTE DEFENDANTS

Plaintiff Xpoint Technologies, Inc. (“Plaintiff”) makes this motion seeking the substitution of SPRINT SPECTRUM, LP and NEXTEL OPERATIONS, INC. as Defendants in place of Defendant SPRINT NEXTEL CORPORATION (“Sprint Nextel”).

1. Plaintiff filed this action for infringement of U.S. Patent No. 5,913,028 ('028 Patent) against SPRINT NEXTEL CORPORATION on August 21, 2009. Plaintiff amended its Complaint on September 18, 2009 to add additional Defendants.

2. Since that time, in-house counsel for SPRINT NEXTEL contacted counsel for Plaintiff to explain its position that SPRINT NEXTEL is merely a holding company that does not actually make or distribute any products that Plaintiff would accuse of infringing the '028 patent.

3. Accordingly, counsel for Plaintiff and counsel for SPRINT NEXTEL have agreed that SPRINT SPECTRUM, LP (a limited partnership organized under the laws of the State of Delaware) and NEXTEL OPERATIONS, INC. (a corporation organized under the laws of the State of Delaware) are the proper parties to this litigation and should be substituted for SPRINT NEXTEL as defendants in the above-captioned matter so that all claims made against SPRINT NEXTEL are now made against SPRINT SPECTRUM, LP and NEXTEL OPERATIONS, INC.

4. No prejudice results from substitution of these parties because none of the parties to this lawsuit have filed answers or responsive pleadings, discovery has not commenced, and no scheduling or party joinder orders are in place.

Dated: December 2, 2009

BOUCHARD MARGULES
& FRIEDLANDER, P.A.

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